



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

4APT-PTSB

AUG 26 2008

Certified Mail – Return Receipt Requested

Whitney K. McGuire, Esq.  
Gunster Yoakley & Stewart, P.A.  
One Enterprise Center  
225 Water Street, Suite 1750  
Jacksonville, FL 32202

SUBJ: Docket No. TSCA-04-2008-2523(b)  
Petroferm, Inc.

Dear Ms. McGuire:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section V of the CAFO, the assessed penalty of \$17,401.55 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Mr. Verne George (404) 562-8988.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanne M. Gettle".

Jeanne M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF: )  
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Petroferm, Inc. )  
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Respondent. )  
\_\_\_\_\_ )

Docket Number: TSCA-04-2008-2523(b)

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REGION 4  
EPA REGION 4

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified in 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Petroferm, Inc. (hereinafter "Respondent").

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

**II. Preliminary Statements**

3. Pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for any person to:

(1) fail or refuse to comply with any rule or order promulgated pursuant to Section 4, 5 or 8 of TSCA, 15 U.S.C. §§ 2603, 2604, or 2607; (2) use for commercial purposes a chemical substance or mixture that the person knew or had reason to know was manufactured, imported, processed, or distributed in commerce in violation of TSCA Section 5, 15 U.S.C. § 2604; (3) fail to maintain records, submit reports or information, or permit access to or allow copying of records as required by TSCA; or (4) refuse to permit entry or inspection as authorized by Section 11 of TSCA, 15 U.S.C. § 2610. Any person who violates a provision of Section 15 of TSCA may be assessed a penalty of up to \$27,500 for each such violation, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19. For a violation occurring after March 15, 2004, a penalty of up to \$32,500 may be assessed. Each day a violation continues may constitute a separate violation.

4. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994.

5. To determine the confidential business information (CBI) that was deleted [CBI deleted] from this CAFO, Complainant or Respondent should refer to the EPA's Show Cause Letter that contains CBI and is dated November 30, 2006.

### **III. Factual and Jurisdictional Allegations**

6. At the time of the alleged violations, Respondent owned and operated a chemical manufacturing facility at 2416 Lyndale Road, Fernandina Beach, Florida.

7. On June 21, 2005, an authorized agent of EPA Region 4 conducted an inspection at Respondent's Fernandina Beach facility pursuant to Section 11(a) of TSCA, 15 U.S.C. § 2610(a) and identified alleged violations of TSCA described in the following paragraphs.

8. A notice of commencement (NOC) was not submitted to EPA for [CBI deleted], hereinafter referred to as Chemical B, within thirty (30) calendar days after Respondent manufactured the first commercial batch of Chemical B, as required by 40 C.F.R. § 720.102(b)(1).

9. Respondent manufactured for commercial purposes [CBI deleted], hereinafter referred to as Chemical D, that was not listed on the TSCA inventory when it was manufactured for commercial purposes.

10. A premanufacture notice (PMN) was not submitted to EPA before Respondent manufactured Chemical D for commercial purposes, as required by 40 C.F.R. § 720.22(a)(1).

11. Respondent manufactured for commercial purposes [CBI deleted], hereinafter referred to as Chemical P, that was not listed on the TSCA Inventory when it was manufactured for commercial purposes.

12. A PMN was not submitted to EPA before Respondent manufactured Chemical P for commercial purposes, as required by 40 C.F.R. § 720.22(a)(1).

13. Respondent manufactured the following chemical substances for commercial purposes:

[CBI deleted], hereinafter referred to as Chemical F;

[CBI deleted], hereinafter referred to as Chemical M;

[CBI deleted], hereinafter referred to as Chemical G;

[CBI deleted], hereinafter referred to as Chemical H;

[CBI deleted], hereinafter referred to as Chemical I;

[CBI deleted], hereinafter referred to as Chemical J;

[CBI deleted], hereinafter referred to as Chemical K;

[CBI deleted], hereinafter referred to as Chemical N; and

[CBI deleted], hereinafter referred to as Chemical O.

14. The chemical substances referenced in Paragraph 13 were not on the TSCA inventory when they were manufactured for commercial purposes.

15. Respondent manufactured the chemical substances referenced in Paragraph 13 for several years but did not submit to EPA the polymer exemption report required by 40 C.F.R. § 723.250(f), for any of the chemical substances referenced in Paragraph 13.

#### **IV. Consent Agreement**

16. For the purposes of this CAFO, Respondent admits to the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.
17. Respondent waives its right to a hearing on the allegations contained herein.
18. Respondent waives its right to appeal the final order, accompanying this consent agreement.
19. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
20. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
21. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16 of TSCA, only for the specific violations alleged herein. This CAFO does not resolve any liability with regard to Respondent's June 30, 2008, self-disclosure regarding TSCA matters. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.
22. Complainant and Respondent mutually and voluntarily agree to a full and complete resolution of this matter by mutual compromise and settlement by executing this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.

#### **V. Penalty**

23. Pursuant to 15 U.S.C. § 2615(a), TSCA Section 16(a), Respondent shall pay a civil penalty of Seventeen Thousand, Four Hundred One Dollars and Fifty Five Cents (\$17,401.55), **within 30 days from the effective date of this CAFO.**

24. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to the following address:

For payment submittal by U.S. Postal Service:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc):

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St Louis, MO 63101

**The check shall reference the name and the Docket Number of the CAFO ["Petroferm, Inc., TSCA-04-2008-2523(b)"].**

25. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960;

Verne George  
Toxic Substances Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

and

Saundi Wilson  
Office of Environmental Accountability  
U.S. EPA - Region 4

61 Forsyth Street  
Atlanta, Georgia 30303-8960.

26. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

27. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date.

#### **VI. Supplemental Environmental Project**

28. Respondent shall undertake the Supplemental Environmental Project (SEP) as described in Attachment 1 and incorporated herein by reference.

29. As is described in Attachment 1, Respondent agrees to implement an Environmental Management System (EMS) SEP that follows the twelve elements outlined in the EPA Office of Enforcement and Compliance Assurance-National Enforcement Investigations Center Compliance-Focused Environmental Management System – Enforcement Agreement Guidance (revised August 2002) (OECA-NEIC CFEMS Guidance). Respondent will meet the twelve elements by developing and implementing an EMS manual incorporating the elements discussed in the OECA-NEIC CFEMS Guidance and installing EMS software that will be developed specifically for use by Respondent. The EMS manual will provide the framework for the development and implementation of Chemical Safety EMS software by Chemical Safety Corporation to track compliance with all applicable environmental statutes.

30. The EMS will focus on TSCA, but also address applicable environmental requirements including (but not limited to) those related to the Emergency Planning and Community Right-to-Know Act, the Clean Air Act, and the Resource Conservation and Recovery Act.

31. The software developed by Chemical Safety Corporation to track compliance will provide real-time information on the TSCA regulatory status of each item in Respondent's inventory.

32. The SEP shall be completed within twenty-four (24) months of the effective date of this Consent Agreement.

33. As specified in Attachment 1, the total expenditure for the SEP shall be at least \$103,900, as follows:

- (i) Capital costs for purchase of the Chemical Safety EMS software program equal to \$69,900; and
- (ii) One-time non-depreciable costs for installation of, integration of, training on, and conversion to the chemical safety EMS software equal to \$34,000.

Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report, described in Paragraph 38, below.

34. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the activities in the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement or grant, in any other case, or in compliance with any state or local requirement. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP.

35. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for the civil penalty payment or SEP cost made pursuant to this CAFO.



36. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

37. Every six months beginning thirty (30) days after the effective date of this CAFO, Respondent shall submit a status report to EPA describing Respondent's activities towards completion of the SEP. The reports shall include not only what was accomplished in the prior six months, but also a description of activities planned for the forthcoming six months. Respondent shall certify in the status reports that it is "on schedule" to complete the SEP within the required twenty-four (24) months following the effective date of this CAFO. The status reports shall be sent to the EPA contact identified below in Paragraph 53 of this CAFO.

38. Respondent shall submit a SEP Completion Report for the SEP to EPA within thirty (30) calendar days after completion, or within thirty-four (34) months after the effective date of this Consent Agreement, whichever is earlier. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of any problems encountered and the solutions thereto;
- c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks not previously submitted;
- d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement;
- e. Signed letter from Chemical Safety Corporation documenting installation, implementation and/or integration of the software package for Respondent; and
- f. A description of the environmental and public benefits resulting from the implementation of the SEP consistent with the description in Attachment 1.

39. Following the receipt of the SEP Completion Report described in the preceding paragraph, EPA will do one of the following:

- a. Accept the SEP Completion Report, in writing;
- b. Reject the SEP Completion Report in writing, notify the Respondent in writing of deficiencies in the SEP Completion Report, and grant Respondent an additional thirty (30) calendar days (or more, if EPA determines the additional time is reasonably necessary) in which to correct any deficiencies; or
- c. Reject the SEP Completion Report, in writing, and seek stipulated penalties in accordance with Paragraphs 42-49, below, if a determination is made that the SEP Completion Report is so grossly deficient that the deficiencies cannot be corrected in a timely manner.

40. In the event the SEP is not completed as contemplated herein, as determined by EPA, EPA may seek stipulated penalties in accordance with Paragraphs 42-49.

41. Should Respondent request any extension of time to meet the deadlines for completion of the SEP as imposed by this Consent Agreement, the written request shall contain a justification as to the reasons for the extension and shall be submitted to EPA within five (5) calendar days from the date Respondent becomes aware of the event or circumstance which will cause a delay in the implementation or action required by this Consent Agreement. Should EPA concur with Respondent's request, EPA will notify Respondent in writing and the schedule shall be amended as approved by EPA.

42. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP, and/or to the extent that the actual expenditures for the SEP do not equal or exceed \$103,900, Respondent shall be liable for stipulated penalties according to the provisions set forth below.

43. Except as provided below, for a SEP which has not been completed satisfactorily pursuant to this Section and Attachment 1, Respondent shall pay a stipulated penalty to the United States in the amount of \$103,900.

44. If the SEP is not completed satisfactorily, but Respondent: (i) made good faith and timely efforts to complete the project; and (ii) certifies with supporting documentation, that at least 90 percent of the amount of money which was required to be spent, was indeed expended on the SEP as described in this Section and Attachment 1, Respondent shall not pay any stipulated penalty.

45. If the entire SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money to be spent for the project as described in this Section and Attachment 1, Respondent shall pay a stipulated penalty to the United States in an amount equal to the difference between the money actually spent for the project and \$103,900.

46. For failure to submit the SEP Completion Report as required by Paragraph 38, above, Respondent shall pay a stipulated penalty of \$500.00 for each calendar day after the date when the SEP Completion Report is due, until the report is submitted.

47. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

48. Stipulated penalties shall begin to accrue on the day after performance is due, as extended if an extension is granted by EPA pursuant to the provisions of this Consent Agreement, and shall continue to accrue through the final day of the completion of the activity.

49. Respondent shall pay stipulated penalties within fifteen (15) calendar days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraphs 24 and 25, above. Interest and late charges shall be paid as stated in Paragraph 27, above.

50. Any public statement, oral or written, in print, film, or other media, made by Respondent with reference to the SEP shall include the following language, "[t]his project was

undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Toxic Substances Control Act.”

**VI. General Provisions**

51. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

52. This CAFO shall be binding upon the Respondent, its successors and assigns.

53. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Verne George  
Toxic Substances Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-8988

54. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

**VI. Effective Date**

55. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO: Petroferm, Inc. [TSCA-04-2008-2523(b)]**

By: Anderson M. Foote Date: July 30, 2008  
Name: Anderson M. Foote (Typed or Printed)  
Title: Assistant Secretary (Typed or Printed)

**United States Environmental Protection Agency**

By: Douglas Neely for Date: 8/19/08  
Beverly H. Banister, Director  
Air, Pesticides & Toxics  
Management Division  
Region 4

**V. Final Order**

APPROVED AND SO ORDERED this 22<sup>nd</sup> day of August, 2008

By: Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Petroferm, Inc. Docket No. TSCA-04-2008-04-2523(b) to the addressees listed below:

Verne H. George  
PCB and Chemical Products  
Management Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

(via EPA's internal mail)

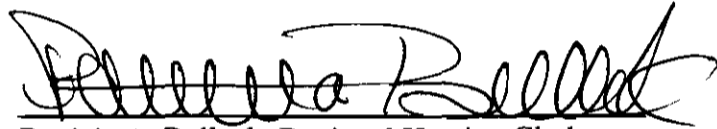
Vera Kornylak  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303-8960

(via EPA's internal mail)

Whitney K. McGuire, Esq.  
Gunster Yoakley & Stewart, P.A.  
One Enterprise Center  
225 Water Street, Suite 1750  
Jacksonville, FL 32202

(via Certified Mail; Return  
Receipt Requested)

Date: August 26,  
2008



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental Protection Agency  
Region 4  
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Atlanta, GA 30303  
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